

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Mark McCoy,)	
)	
Petitioner,)	C.A. No. 4:16-0638-HMH-TER
)	
vs.)	OPINION & ORDER
)	
Warden Cartledge,)	
)	
Respondent.)	

This matter is before the court on Mark McCoy’s (“McCoy”) pro se motion to alter or amend the judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. For the reasons set forth below, the court denies McCoy’s motion.

The court previously summarily dismissed McCoy’s 28 U.S.C. § 2255 motion in an order dated December 15, 2016. (Dec. 15, 2016 Order, ECF No. 42.) On December 29, 2016,¹ McCoy filed a supplement to his objections to the Report and Recommendation, which the court construed as a motion for relief from judgment, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. (Mot. Relief J., ECF No. 45.) On January 4, 2017, the court denied McCoy’s motion. (Jan. 4, 2017 Order, ECF No. 46.) On December 30, 2016,² although not received by the court until January 5, 2017, McCoy filed the instant Rule 59(e) motion. A response in opposition to McCoy’s motion was filed by Respondent on January 17, 2017. (Resp. Opp’n Mot. Alter J., ECF No. 48.)

¹ See Houston v. Lack, 487 U.S. 266 (1988).

² Id.

A motion to alter or amend the judgment under Rule 59(e) may be made on three grounds: “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). “Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment” Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). “In general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” Id. (internal citation and quotation marks omitted).

Upon review, McCoy’s motion does not identify an intervening change in controlling law, new evidence, or any clear error of law made in the court’s earlier judgment. Rather, McCoy repeats his earlier arguments and objections to the Report and Recommendation. Based on the foregoing, the court finds that McCoy has made no showing of error in the court’s December 15, 2016 Order. Therefore, McCoy’s motion is denied.

It is therefore

ORDERED that McCoy’s motion to alter or amend the judgment, docket number 48, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
January 18, 2017

NOTICE OF RIGHT TO APPEAL

The Movant is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.